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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/553,811

10/18/2005

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02/09/2009

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EXAMINER

MCCORD, PAUL C

ART UNIT

PAPER NUMBER

2614

MAIL DATE

DELIVERY MODE

02/09/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/553,811</p>	<p>Applicant(s) CSICSATKA ET AL.</p>	
	<p>Examiner PAUL MCCORD</p>	<p>Art Unit 2614</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 January 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/CURTIS KUNTZ/
Supervisory Patent Examiner, Art Unit 2614

Continuation of 11. does NOT place the application in condition for allowance because: The 101 rejection is maintained as the proposed digital audio data player also fails the machine or transformation test as it is disclosed as operable in a software implementation on a general purpose computer and as such does not tie the claim to a particular machine nor does it transform the claimed data into a different state or thing. Examiner appreciates Applicant's arguments concerning 35 USC 103 rejections of the Claims, but respectfully disagrees with the assertion that they distinguish the claims over the prior art. Regarding Claim 1: Examiner respectfully disagrees with Applicant's argument that Heo is unable to remedy the deficiency of Platt in regard to "enabling a user to determine which of the selected tracks will be included in the playlist by sequentially playing an audio clip from each one of the selected audio data files." When combined with Platt any number of audio files or an entire library can be selected and previews therefrom (either explicitly defined according to the Heo method or merely by the well known method of Heo: Fig 1.) Selected tracks can be played in sequence to determine selected tracks for inclusion, with the determining done using "ADD" controls of the Platt user interface (Platt: Fig 4) thus enabling a user to determine included tracks by sequentially playing audio clips. Further, while Heo does not explicitly teach addition of an audio file to a playlist while the clip is playing, Heo teaches the detection of user reproduction commands during playback of audio. Cited art in the Examiner's response also teaches detection of user inputs during media playback: Music is marked and stored in available memory during playback (Novelli: 2003/0144918); a user may rate and thereby associate items with a selected input during playback (Eyal: 2002/0116476); clicking on a song title during playback initiates a variety of processor actions (Zainouline: 2001/0030660.) Thus, Platt in view of Heo makes obvious to one of ordinary skill in the art the detection of user input received during playback of an audio clip for the purpose of initiating any of a variety of processor operations such as inclusion through the operation of the "ADD" button of Platt Fig 4. Finally, in regard to Applicant's assertion that no motivation exists to combine Platt with Heo as Platt teaches away from Heo. Platt is silent on specifics regarding the "Preview" button of the Fig 4 interface. Heo teaches specifics related to a user preview of a plurality of audio tracks including using a default preview in the absence of a specified preview or designating specifics of preview which can be designated to all or any of the tracks for reproduction of a representative portion of the track. Designation as per Heo of a common preview start time to all or some of the tracks in a library and sequential play back of previews of the designated tracks in at least the manner of Heo: Fig. 1. Heo thus allows a user to advantageously operate the Platt interface in a manner suggested by Platt: Fig. 4 causing previews of the selected tracks or library to play sequentially and adding liked tracks to the playlist during playback of the preview; thus Platt and Heo make obvious Applicant's claims and render Applicant's arguments non-persuasive.